IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 143 of 1997

with

CRIMINAL MISC.APPLICATION No 395 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

MEGHDOOT ACIDS PVT LTD.

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Revision Application No. 143 of 1997

MR BR GUPTA for Petitioners

MR SP DAVE, APP, for Respondent No. 1

MR JB PARDIWALA for Respondent No. 2

2. Criminal Misc.ApplicationNo 395 of 1997

MR BR GUPTA for Petitioners

MR JB PARDIWALA for Respondent No. 1

NOTICE SERVED for Respondent No. 2

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 16/06/2000

CAV JUDGEMENT

#.. This Criminal Revision Application has arisen out of an order passed by learned Judicial Magistrate, First Class, Pardi, district Valsad, in an application tendered by accused in Criminal Case No.2218 of 1996, pending before the learned Judicial Magistrate, First Class, Pardi, under Section 138 of the Negotiable Instruments Act. In that application, the accused persons sought a relief of recalling of summons/dropping of the proceedings against them. The learned Judicial Magistrate, First Class, after hearing the parties, rejected the application by an order dated 18th January, 1997, which is the subject matter of challenge in this revision application.

#. The Facts leading to the present litigation can be narrated in a narrow compass as follows:-

2.1 Criminal Case No.2218 of 1996 came to be lodged by one Paresh Mansukhlal Shah (present respondent No.2) against (1) Meghdoot Acids Private Limited, (2) Shri Umesh R. Gupta, and (3) Shri Ajay R. Gupta (present petitioners). The complaint was under Section 138 of the Negotiable Instruments Act for dishonour of cheque issued by the present petitioners. On lodging of the complaint, the learned Judicial Magistrate, First Class, issued summons against the petitioners. On receipt of the summons, the petitioners tendered an application before the learned Judicial Magistrate, First Class, on 30th November 1996, stating that the contents of the complaint did not fulfil the statutory ingredients of Section 138 of the Negotiable Instruments Act and the process, therefore, could not have been issued on basis of that complaint. It was contended further in that application by the petitioners (original accused) that the complaint does not state the date when the notice under Section 138 came to be served on any one or more of the accused. The statement of the complainant recorded during the course of verification by the learned Magistrate is also silent in this respect and, therefore, it could not have been said that the complaint is filed within 45 days and after expiry of 15 days of service of such notice, as required under Section 138(3) of the Negotiable Instruments Act.

2.2 It was also contended in that application that neither the complaint nor the statement of the complainant recorded during the course of verification discloses that the complainant is either the payee or the

holder in due course of the cheques in respect of which the complaint is filed and, therefore, the requirement under Section 142 of the Negotiable Instruments Act are not fulfilled. It was further contended in that application that the complaint does not attribute any criminal responsibility to accused No.2 or 3 except that they were acquainted with the affairs of accused No.1 and were performing the work of accused No.1 and that they were responsible for its working. As such, there is not even a whisper or even a shadow of events to show that accused Nos. 2 and 3 have committed any act in capacity as Directors of accused No.1.

2.3 It was further contended that the requirements of Section 141 of the Negotiable Instruments Act to the effect that accused Nos.2 and 3, at the relevant time, were in-charge of or were responsible to accused No.1, were not complied with and, there was no allegation to that effect in the complaint. It was contended in the application that there has been material suppression of facts in the complaint. An important objection was raised as to the territorial jurisdiction of the learned Judicial Magistrate, First Class, on the ground that the cheques were issued at Ahmedabad, they were sent for collection to Ahmedabad and, ultimately, it was the bank at Ahmedabad which had dishonoured the cheque and, therefore, the offence cannot be said to have been committed within the territorial jurisdiction of Judicial Magistrate, First Class, Pardi and the complaint was, therefore, not maintainable.

2.4 Learned Judicial Magistrate, First Class, after hearing both the sides, came to the conclusion that he has jurisdiction to entertain the complaint. He also decided that the complainant has lodged the complaint in capacity as a partner, as contended in the complaint and, therefore, dispute regarding the complainant not being drawee or holder in due course cannot be accepted. Likewise, the objection regarding non-mentioning of the date of receipt of notice in the complaint was also turned down by the learned Judicial Magistrate, First Class and, ultimately, he rejected the application. Being aggrieved by the said order, the original accused persons have preferred this Revision Application under Section 397 read with Section 401 of the Code of Criminal Procedure. The grounds raised in the memo of revision application are the same as were represented in the application before the learned Judicial Magistrate First Class, Pardi.

#. Mr. Gupta, learned advocate for the revisioners,

submitted that the complaint is silent about the status of the complainant. He submitted that the learned Judicial Magistrate, First Class, has negatived this ground raised by the accused persons while rejecting the application of the accused persons. He submitted that it is not clear in the complaint that whether the complainant is the payee or he is the holder in due course. The cheques were drawn in favour of M.J. Corporation, whereas the complainant is Paresh Mansukhlal Shah, partner and, therefore, the learned Judicial Magistrate, First Class, ought not to have taken the cognizance of the complaint. In support of his case, Mr. Gupta has relied upon the decision in the case of Dipendra G. Choksi v. K.C. Dhoot, 1995(1) GLR 424.

3.1 Mr. Gupta submitted that the provisions of Section 138 of the Negotiable Instruments Act require that in order to proceed against a drawer of the cheque, notice must be given to him about dishonour of cheque and if, within two weeks from the date of receipt of the notice, the drawer of the cheque does not make the payment, then a complaint can be lodged and, therefore, date of receipt of the notice is of vital importance as the cause of action arises only on non-compliance of the notice within 15 days from the date of receipt of the notice. In the instant case, there is an averment in the complaint that notice was served but there is no averment in the complaint as to when this notice was served. The complaint has to be filed within the stipulated time and, therefore, in order to ascertain that the complaint is within the period of limitation also, this averment in the complaint is necessary. The complaint, therefore, suffers a fatal defect which was not considered by the learned Judicial Magistrate, First Class in its legal perspective. The cognizance taken by the learned Judicial Magistrate, First Class is, therefore, erroneous and reflects non-application of mind. Mr. Gupta submitted that no documents were produced with the complaint to show that the notice was served. In support of his argument, Mr.Gupta has placed reliance on the following decisions :-

(1) M/s Pepsi Foods Ltd. v. Special Judicial Magistrate, A.I.R. 1998 SC 128.
(2) K.M. Mathew v. State of Kerala, A.I.R. 1992 SC 2206.
(3) M/s Saketh India Ltd. v. M/s India Securities Ltd., A.I.R. 1999 SC 1090.
(4) Gujarat Industrial Co.Op. Bank Ltd. v. P.N. Vora, 37(2) GLR, 445.
(5) Ashok Verma v. Ritesh Agro (P) Ltd. & Anr., II

(1994) CCR 1364.

Mr. Gupta's thrust was on the fact that there was no material on record on the date of taking cognizance to show that the notice was served and, therefore, it is a clear case of error on part of the learned Judicial Magistrate, First Class.

3.2 Mr. Gupta submitted that there is no averment in the complaint alleging that revisioners No.2 and 3 were in-charge of the affairs of the company and were responsible for the conduct of business of the company, as contemplated under Section 141 of the Negotiable Instruments Act and, therefore, cognizance against accused Nos.2 and 3, i.e. revisioners No.2 and 3 is wrongly taken. Out and in director of a company cannot be prosecuted under Section 138 of the Negotiable Instruments Act and, therefore, an error is committed by the learned Judicial Magistrate, First Class, according to the Mr. Gupta. Mr. Gupta cited the following decisions in support of this argument.

(1) Delhi Municipality v. Ram Kishan, A.I.R. 1983 SC 67.
(2) State of Haryana v. Brijlal Mittal & Ors., (1998) 5 SCC 343.
(3) 1991 Crimes 181 (Delhi).
(4) Secunderabad Health Care Ltd. v. Secunderabad Hospitals Pvt. Ltd., 1998(4) Crimes 74. (A.P.).

3.3 Mr. Gupta vehemently contended that there is nothing to show that the cheque was issued for a legally enforcible debt. The complaint is silent in this regard and gives no detail as to a debt for which the cheque was issued. The contentions in the complaint are vague. Details of the bills are not given. The complainant keeps silence on an amount of Rs.2.5 lakhs already received and, therefore, the complainant is not approaching the Court with clear hands. There is a dispute about the consignments and, therefore, cognizance could not have been taken by the learned Judicial Magistrate, First Class. He has pressed into service the decision in the case of Sadanandan Bhadran v. Madhavan Sunil Kumar, (1998) 6 SCC 524.

3.4 Mr. Gupta submitted that the complaint does not state anything about the cause of action and, therefore, it is not legally tenable.

3.5 The last contention raised by Mr. Gupta is that, the learned Judicial Magistrate, First Class, Pardi had

no jurisdiction to entertain this complaint. For the reason that both the drawee bank is located at Ahmedabad and the act of dishonour also took place at Ahmedabad and not at Pardi, the learned Judicial Magistrate, First Class, Pardi could not have taken cognizance. He pressed into service the following decisions :-

(1) P.K. Muraleedharan v. C.K. Pareed & Anr., 1992 Cri. L.J. 1965.
(2) Rakesh Nemkumar Porwal v. Narayan Dhondu Joglekar, [1993] 78 Comp Cas. 822.
(3) Indmark Finance and Investment Co. Pvt. Ltd. v. The Learned Metropolitan Magistrate, 28th Court & Ors., 1992(2) Crimes 973.
(4) R.K. Jain v. State & Ors., 1988(1) Crimes 514.

#. Mr. Pardiwala, learned advocate for respondent No.2 submitted that so far as the question of territorial jurisdiction is concerned, decision of the High Court in the case of Shaw Wallace & Co. Ltd. and Ors. v. State of Gujarat and Anr., Criminal Revision application No.452 of 1997, makes it clear that the place where the drawee stays or has the office or the place where the drawee receives the intimation of dishonour will have the jurisdiction.

4.1 As regards the dispute raised by the revisioners regarding receipt or non-receipt of the consignment, Mr. Pardiwala submitted that it is a question of fact which can be proved or disproved at the trial and the trial is therefore, necessary. In this regard, he pressed into service decision of Anchor Capitals of India Ltd. v. State of Gujarat & Anr., 1998(2) GLH 263.

4.2 As regards competency of the complainant to lodge the complaint, Mr. Pardiwala submitted that the complainant is a partner. Placing reliance on case of Ganesh Sukhlal Joshi v. M.A. Bharati & Anr., 1993 (3) Crimes 403, Satishkumar Jayantilal Shah v. State of Gujarat & Anr., 1997(2) G.L.H. 605 and the decision of this High Court in Criminal Misc. Applications No.2223 of 1997 and 2218 of 1997, he submitted that the objection raised by the revisioners is not well founded.

4.3 As regards the date of receipt of notice, Mr. Pardiwala submitted that the factually it is true that the date of receipt of notice is not mentioned in the complaint, but it was for legitimate reasons. He submitted that the postal acknowledgment slip was not received by the complainant. The complainant was required to enter into the correspondence with the postal

department and, therefore, presumption against the complainant at the initial stage of taking cognizance in this regard would not be proper. If the complainant waited for the acknowledgment receipt to be received by him before filing the complaint to state the date of receipt, probably complaint would be time barred and if the date is not mentioned in the complaint and the complaint is received, the complainant would be non-suited for no fault of his if the contention of the accused is to be accepted. Mr. Pardiwala, therefore, submitted that the interpretation made by the revisioner is not correct. In support of his say, he pressed into service the following decisions :-

(1) Satishkumar Jayantilal Shah v. Pankaj Mashruwala and Another, 1996(2) GLR 751.
(2) R. Shankar v. City Bank,[1994] 83 Comp. Cas. 248.
(3) G.S. Srikanth v. M/s Sri Lakshmi Financiers, 1999 Criminal Law Journal 329.
(4) L. Sonkadhir v. P. Thiyagarajan, 1998 Criminal Law Journal 3903.
(5) S.K. Trading Co. & Anr. v. Beerbal Dass Zondal & Anr., [1995] 84 Comp. Cas., 587.
(6) N. Velayutham v. Sri Ganesh Steel Syndicate, [1995] 84 Comp. Cas., 785.

Mr. Pardiwala, therefore, submitted that the revision merits dismissal only and the same may be dismissed.

#. Mr. Gupta in reply to the arguments advanced by Mr. Pardiwala submitted that the decision of Gujarat High Court and the decision of Bombay High Court rendered by Division Bench have taken a different view so far as question of jurisdiction is concerned and, therefore, the matter may be referred to a Larger Bench to decide this question. Reiterating has earlier arguments, Mr. Gupta submitted that apart from pleading as to legal debt, there is no material to support the case of the complainant and that there is no averment in the complaint to show that the accused persons were in-charge of the conduct of business of the company (accused No.1).

#. Mr. S.P. Dave, learned Additional Public Prosecutor appearing for respondent No.1-State of Gujarat submitted that the order impugned in this revision application is just, legal and proper. The order is passed after considering various decisions of superior Courts and, therefore, does not call for interference by this Court.

#. Before proceeding with discussion of merits of the matter, at the outset, it may be noted that this is a Criminal Revision Application arising out of an order passed by the learned Judicial Magistrate, First Class, Pardi and although arguments are advanced for quashing of the complaint, this Court cannot overlook the fact that the scope under Section 397 read with Section 401 of Code of criminal Procedure is different from the scope of powers under Section 482 of the Code of Criminal Procedure (Delhi Municipality v. Ram Kishan Rohtagi and Ors., AIR 1983 SC 67).

#. The first point on which the taking of cognizance of the complaint is assailed upon by the revisioners is in respect of the status of the complainant. The cheques were drawn in favour of M.J. Corporation. Undisputedly, the complainant's name is Paresh Paresh Mansukhlal Shah, partner of M.J. Corporation. It is, therefore, contended that Mansukhlal Shah is neither a payee nor a holder in due course whereas a complaint under Section 138 can be lodged only either by a payee or by a holder in due course and, therefore, the complainant, namely, Paresh Mansukhlal Shah had no locus to lodge the complaint and, therefore, the learned Judicial Magistrate, First Class, ought not to have taken cognizance of the complaint. In this regard, the revisioners have placed reliance on the decision in the case of Dipendra G. Choksi v. K.C. Dhoot, 1995(1) GLR 424. However, in this regard, the principle laid down in the case of Satishkumar J. Shah v. State of Gujarat, 1997(2) GLH 605 may well be profitably used. In that case, the complaint was lodged by the Manager of a company. In the title of the complaint, it was not mentioned as to in what capacity the complainant had filed the complaint. However, the averments in the complaint made it clear that the same was filed by the company through its Manager and it was held that the complaint was not bad for the reason that during the course of recording of evidence, the resolution passed by the company authorising the Manager to lodge the complaint was produced on record. Besides, the deposition of the complainant to the effect that he was the Manager of the company concerned was also taken into consideration. In that case, in the cause title, even the name of the company was not mentioned and this Court observed as under :-

> "No doubt, in the title of the complaint there is no specific name of the Company, but merely because of not mentioning of the Company in the title of the complaint, it could not be said that

> the complaint is not lodged by the Company. In the case of Dipendra G. Choksi and Anr. v. Kailashchandra C. Dhoot & Anr., XXXVI (1) G.L.R. 424 from the averments made in the complaint itself, the learned Advocate for the Company was not in a position to point out to His Lordship B.C. Patel, J. as to who was the payee of the cheque. It seems that in that complaint, there was no reference of the Company in the body of the complaint as well as in the title of the complaint."

8.1 In this regard, Mr. Pardiwala placed reliance on an unreported decision of this Court in Criminal Misc. Application No.2223 of 1997 with Criminal Misc. application No.2218 of 1997 between Geekay Exim (India) Pvt. Limited and the State of Gujarat, decided on 3.7.1997. In that case also, a view was taken that as the complaint was filed in name of legal entity, there was no legal bar and the complaints were maintainable. It was observed that the company is a juristic person/a legal entity and though the company is a legal entity, it does not have soul, mind, body and limbs to walk to the Court for preferring a complaint. The dictates of common sense, practical wisdom, prudence and expedience impels the Court, in such a situation, to allow a company to be represented by some person concerned with the affairs of the company.

8.2 Bombay High Court in the case of Ganesh Sukhlal Joshi v. M.A. Bharati & Anr., 1996(3) Crimes 402, had to deal with almost identical case as this Court has on its hand and in paragraph 8 of the said judgment, it was observed : "On perusal of the complaint, it is seen that the complainant is shown as 'Shri Ganesh Sukhlal Joshi, Partner of M/s Nagpur Chemical Agency, Nagpur'. In this view of the matter, there was no difficulty for the complainant Ganesh Sukhlal Joshi to file complaint case in his capacity as partner of M/s Nagpur Chemical Agency and the finding recorded by the Trial Court that the complaint was not properly filed, is on its face erroneous and cannot be sustained". Relying on decision in the case of Brijlal v. Jugalkishore, 1995 (2) Crimes 636, the Court observed that "the complaint by one of the partners cannot be faulted and when the complaint is filed by one of the partners of the firm, it suffers from no infirmity".

8.3 In the instant case, undisputedly, the complaint is lodged by Paresh Mansukhlal Shah as partner of the firm in whose favour the cheque was drawn and, therefore,

the complaint cannot be said to be suffering from any fatal defect on account of want of locus on part of the complainant or on account of it having been filed by an improper person having no cause of action. The first objection raised on behalf of the original accused persons and present revisioners, therefore, cannot be accepted.

#. The revisioners have raised strong objection as to non-mentioning of the date of receipt of notice in the complaint and have tried to make out a case that learned Judicial Magistrate's decision of proceeding with the complaint against all the accused is erroneous. The learned Magistrate could not have taken cognizance of the complaint at all as there is nothing to indicate that the complaint was lodged after lapse of 15 days from the date of receipt of the notice because of non-payment on part of the accused persons. If the complaint is lodged before lapse of 15 days, it would be a premature complaint as the cause of action would arise only on expiry of 15 days from the date of receipt of the notice. In this regard, it may be noted that the law also requires that the complaint is supposed to be filed only if the drawer of the cheque fails to make the payment within 15 days of demand being made by the payee or holder in due course upon dishonour of the cheque. In this regard, it may be noted here that in the instant case, the case of the respondent-original complainant is that the date of receipt could not be stated in the complaint as the postal acknowledgment slip was not received by the complainant after issuing the notice and the complainant-respondent had to enter into correspondence with the postal authorities in this regard. Copies of the correspondence have been produced before this Court. In this view of the matter, the complaint could not have contained an averment regarding date of receipt of the notice and non-mention of the date of receipt of notice need not necessarily lead to a presumption that the complaint is filed before expiry of 15 days resulting into quashing of the complaint. It would be a matter of evidence as to when the notice was issued and when it was received and whether the complaint is premature or not. If a view is taken that unless there is an averment in the complaint as to date of receipt of notice by the accused, complainant would be required to wait till acknowledge is received from the postal authorities or he will have to enter into correspondence with the postal authorities which would prove to be a time consuming affair and by the time the complainant gets a positive response from the postal authorities, the complaint may get time barred.

Therefore, failure/inability on part of the complainant in mentioning the date of receipt of the notice by the accused, in view of this Court, cannot be permitted to result into throwing away of the complaint at the threshold. After all whether notice is duly served or not can be proved with evidence at trial and its effect on merits of the case can be decided then. But in such peculiar facts, it would lnot be proper for this Court to interfere with the order of learned Judicial Magistrate, First Class, taking cognizance in exercise of revisional powers by this Court. In this regard, decision in the case of R. Shankar v. City Bank, [1998] 83 Comp. Cas. 248 may be referred to.

9.1 Reliance was placed on behalf of the revisioners in the case of Rakesh N. Porwal v. N.D. Joglekar, [1993] 78 Comp. Cas. 822, wherein it was held that an offence under Section 138 is complete only upon failure of drawer to pay within 15 days of notice of dishonour. In that case, the complaint was filed before expiry of 15 days and, therefore, it was held that the Magistrate was not entitled to take cognizance. There cannot be any dispute about the proposition of law propounded in that decision. If the complaint is lodged before expiry of 15 days from the date of receipt of notice by the accused, it would be premature. But, in the instant case, it is neither the case of the revisioner nor it is found from the record that the complaint was preferred before expiry of 15 days and, as discussed earlier, merely because of non-mentioning of date of receipt of notice in the complaint, no presumption can be drawn that the complaint was preferred before expiry of 15 days. It would be a matter of evidence as to when the notice was received and as to when the complaint was lodged. In this view of the matter, this decision cannot help the revisioners.

9.2 In the case before this Court, it is found that the complainant was required to enter into correspondence with the postal authorities and after considerable correspondence, the postal authorities could furnish the detail that the notices were delivered on 9.8.1996. It may further be noted that the complainant was vigilant from the beginning and had entered into correspondence with the postal authorities through his advocate from 4.9.1996. The complaint is lodged on _____ and, thus, there is no lapse or negligence on part of the complainant and he must not be made to suffer for no fault on his part. In the given set of circumstances, the complainant could not have stated the date of receipt of the notice by the accused in his complaint. He could not have waited till he either received the postal

acknowledgment receipt or till he received the proof of service of notice from the postal department. Had he waited, it would have rendered his complaint time barred. Such a technical approach in such matter cannot be entertained as it may result into non-suiting the complainant and thereby resulting into miscarriage of justice. The plea of the revisioners, therefore, cannot be accepted more so when the revisioners are not coming even at this stage with a specific plea of a premature or a time barred complaint.

##. Another plea that is taken by the revisioners is that the complaint bears no averment that the cheques were issued for a legally enforcible debt. In this regard, it is submitted that the contentions in the complaint are vague and the details of bills are not given. An amount of approximately Rs.2.5 lakhs received by the complaint is not referred to at all by the complainant in the complaint. Three consignments were sent to the complainant whereas only two are referred to in the complaint. The complainant is, therefore, not coming with clean hands and, therefore also, the proceedings ought to have been dropped. It is not possible to accept this plea of the revisioners for the reason that it would be a matter of evidence as to for what the cheque/cheques were issued. It is not necessary for the complainant to specifically plea that the cheque which was issued to him and dishonoured was, in fact, issued in the discharge of a debt or a liability. In fact, the burden is on the accused to show that the cheque issued by him and dishonoured by the bank was not in the discharge of any debt or liability (Anchor Capitals of India Limited v. State of Gujarat, 1998 (2) GLH 263). A reference to section 139 of the Negotiable Instruments Act will indicate that a presumption has to be drawn unless contrary is proved that the holder of a cheque received the cheque of the nature referred to in Section 138 for the discharge in whole or in part of any debt or other liability and, therefore, this presumption in favour of the complainant can be rebutted by the accused at the trial. Mere non-mentioning of such an allegation or absence of such an averment cannot render the complaint so defective that can be thrown out at the threshold either by quashing the complaint or by discharging the accused or dropping the proceedings against the accused.

##. Another limb of the arguments advanced on behalf of the revisioners was that the learned Judicial Magistrate, First Class, Pardi, had no jurisdiction to entertain this complaint as drawee bank is located at

Ahmedabad and the cheque was also dishonoured at Ahmedabad. In this regard, following decisions have been relied upon by the revisioners :-

(1) P.K. Muraleedharan v. C.K. Pareed & Anr., 1992 Cri. L.J. 1965.
(2) Rakesh Nemkumar Porwal v. Narayan Dhondu Joglekar, [1993] 78 Comp Cas. 822.
(3) Indmark Finance and Investment Co. Pvt. Ltd. v. The Learned Metropolitan Magistrate, 28th Court & Ors., 1992(2) Crimes 973.
(4) R.K. Jain v. State & Ors., 1988(1) Crimes 514.

11.1 The Kerala High Court, in the case between P.K. Muraleedharan and C.K. Pareed and Another, observed that the venue of inquiry or trial has primarily to be determined by the averments contained in the complaint. If on the basis of such averments the Court has jurisdiction, it has to proceed with the complaint. The place where the creditor resides or the place where the debtor resides cannot be said to be the place of payment unless there is any any indication to that effect either expressly or impliedly. The cause of action, as contemplated under Section 142 of the Act arises at the place where the drawer of the cheque fails to make payment of the money. That can be the place where the cheque was issued is located. It can also be the place where the cheque was issued or delivered. The Court within whose jurisdiction any of the above mentioned places fall will, therefore, have jurisdiction to try an offence under Section 138 of the Act.

11.2 In the case between Indmark Finance and Investment Company Pvt. Ltd. (supra), it was held that the cheques issued, which were drawn on a bank in Calcutta, although sent to Bombay, the cheques were produced in Calcutta for encashment and where the same were dishonoured, the offence under Section 138 of the Negotiable Instruments Act can be said to have been committed at Calcutta and not at Bombay.

11.3 In the case between R.K. Jain v. State and Ors., 1988(1) Crimes 514, it was held that when cheques of rent were paid at Delhi where the premises are located, but landlord sent the cheques for collection in Jammu and they were dishonoured, then the offence of cheating can be said to have been committed at Delhi and not at Jammu.

11.4 On basis of above decisions, it was argued that

when the cheques were issued on a bank which is at Ahmedabad and were dishonoured at Ahmedabad, merely because the complainant stays within jurisdiction of Pardi Court and merely because intimation about the dishonour of the cheque was given by a bank located within jurisdiction of Pardi Court, the Judicial Magistrate, First Class, Pardi could not have assumed jurisdiction. However, in this regard, in a decision of this High Court in the case between Shaw Wallace and Company Limited v. State of Gujarat, in Criminal Revision Application No.452 of 1997, decided on 21st January, 1998, the question has been considered in detail and it has been held that in such cases that Court will have jurisdiction within whose local limits the following events occurred :-

(a) The cheque is issued or despatched;
(b) the cheque is received by the payee;
(c) the Bank on which the cheque is drawn is situated;
(d) the cheque is presented for encashment;
(e) the cheque is dishonoured;
(f) the intimation about dishonour of cheque is received by payee or holder of the cheque;
(g) the payee or holder of the cheque resides or carries on his business.

It was also held that the Court within whose local limits the payee resides will have jurisdiction on the principle that the debtor has to find out the creditor and for that, reliance was placed on decision of the Punjab & Haryana High Court in the case of M.M. Malik v. Prem Kumar Goyal, 1981 Cr.L.J. 2594.

11.5 In this view of the matter, admittedly, the complainant resides within the territorial jurisdiction of the Court of Judicial Magistrate, First Class, Pardi and, admittedly, the cheque was presented for encashment with bank at Pardi; and, admittedly, the intimation about the dishonour was given to the complainant by the bank at Pardi and, therefore, in view of this Court, it cannot be said that Judicial Magistrate, First Class, Pardi will have no jurisdiction to entertain the complaint.

11.6 There is no question of referring this question to Larger Bench as this Court is in agreement and is bound by the view expressed in the case of Shaw Wallace (supra) by this Court.

##. The next contention raised by the revisioners is that there is no averment in the complaint against

revisioners No.2 and 3 that they were in-charge of and were responsible to the company for the conduct of the business of the company. The only averment in the complaint is that they are the directors of revisioner No.1-company and, therefore, the learned Magistrate ought not to have taken cognizance against revisioners No.2 and 3. Issuance of process/summons in such cases should be the matter of serious concern for the Judicial Officer issuing such summons/process and in absence of these allegations, complaint qua revisioners No.2 and 3 ought to not to have been taken cognizance of by the learned Magistrate. In this regard, reliance is placed on the decision of the Honourable Apex Court in the case of Municipal Corporation of Delhi v. Ram Kishan, AIR 1983 SC 67. In that case, the offences charged against the company were under Food Adulteration Act. The complaint was against the company and its directors and manager. There were no clear allegations against the manager and directors that they were responsible for the conduct of business of the disputed sample. It was held that the proceedings could be quashed against the directors but not against the manager as no offence against them was made out.

12.1 In State of Haryana v. Brij Lal Mittal and Ors., (1998) 5 SCC 343, in an offence under the Drugs and Cosmetics Act, 1940, considering Section 34, the Delhi High Court held that in cases of offence by companies, simply because a person is director of a company, does not vicariously become liable for the offence committed by the company. It must be shown that he was in-charge of the company and was also responsible to the company for the conduct of business.

12.2 In Secunderabad Health Care Ltd. & Ors. v. Secunderabad Hospitals Ltd. & Ors., 1998 (4) Crimes 74, while dealing with a case under Section 138 and 142 of the Negotiable Instruments Act, the Andhra Pradesh High Court held that in a given case where there are no specific allegations against the accused that at the relevant time they were in-charge of and were responsible to the company for conduct of its business, the proceedings against such accused persons were liable to be quashed. It was held that there must be clear, unambiguous and specific allegations against the persons that they were in-charge of and responsible to the company in conduct of its business at the material time.

12.3 The question that, therefore, arises before this Court is whether the complaint is silent about the role of revisioners No.2 and 3 and, if so, what would be the

effect of such absence of allegation. For that purpose, Section 141 of the Negotiable Instruments Act would be a material factor since the complaint is against a limited company. Section 141 runs as under :-

"141. Offences by companies:- (1) If the person committing an offence under Section 138 is a company, every person who, at the time the offence was committed, was in charge of, and was responsible to the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offrence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any person liable to punishment if he proves that the offence was committed without his knowledge, or that he had exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where any offence under this Act has been committed by a company and it is proved that the offence has been committed with th consent or connivance of, or is attributable to, any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation.- For the purposes of this section, -

(a) "company" means any body corporate and includes a firm or other association of individuals; and

(b) "director", in relation to a firm, means a partner in the firm."

12.4 It is clear from the reading of the above section that liability can be fastened on directors who are responsible for the conduct of its business, i.e. those who fall within the criteria stated in the above section.

14. Mr. Gupta placed reliance on the decision of the Apex Court in the case of State of Haryana v. Brij Lal Mittal, (1998) 5 SCC 343. In that case, the Apex Court was dealing with the case under the Drugs and Cosmetics Act, 1940. Section 34 of the said Act is identical to Section 41 of the Negotiable Instruments Act. In respect of the complaint before the Apex Court, the Apex Court observed thus in paragraph 8:

> "It is thus seen that the vicarious liability of a person for being prosecuted for an offence committed under the Act by a company arises if at the material time he was in charge of and was also responsible to the company for the conduct of its business. Simply because a person is a director of the company, it does not necessarily mean that he fulfils both the above requirements so as to make him liable. Conversely, without being a director a person can be in charge of and responsible to the company for the conduct of its business. From the complaint in question we, however, find that except a bald statement that the respondents were directors of the manufacturers, there is no other allegation to indicate, leven prima facie, that they were in charge of the company and also responsible to the company for the conduct of its business."

15. It is submitted by Mr. Gupta that the complaint does not say anything about revisioner No.2 or 3 being responsible for the conduct of business of the company. In this regard, this Court has gone lthrough the record and proceedings of the Trial Court and in the original complaint, in paragraph 4, it is specifically contended that accused Nos.2 and 3 (present revisioners No.2 and 3) are completely aware about the conduct of business of accused No.1 (present revisioner No.1). It is also contended therein that accused Nos.2 and 3 are conducting the affairs of accused No.1 and, therefore, accused Nos.2 and 3 are responsible to the work of accused No.1. Thus, the contention that the complaint is silent about the case of revisioners No.2 and 3 falling within the criteria of Section 141 of the Negotiable Instruments Act is not born out from the record. Further, apart from the averment in the complaint, xerox copy of the cheques issued by the revisioners are part of the record of the Trial Court and, if perused, they lindicate that the cheques are signed by revisioner No.2 as well as

revisioner No.3, as director of revisioner No.1, meaning thereby that they were at the helm of the affairs of revisioner No.1-firm. The decision relied upon by Mr. Gupta in the case of State of Haryana v. Brij Lal Mittal (supra) cannot help the revisioners.

16. In view of what is discussed above, this Court finds no merits in the revision application. The same deserves to be dismissed and is dismissed. Interim relief granted earlier stands vacated. Office to return the record and proceedings to the Trial Court forthwith.

[A.L. DAVE, J.]
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